control of the premises except as against the grantor or his assigns in the actual exercise of the right reserved.

But if the exception should be held good as a reservation of the land itself, it was an exception only of so much as was necessary for the purposes of the mill. It would therefore necessarily raise a question of fact requiring proof. No proof upon this question was adduced, and it is difficult to perceive how the referee could assume that the premises described in the plaintiff's complaint were the precise quantity of land necessary for the purpose of a mill. The language of the exception is as follows, "Reserving out of said piece of land so much as is necessary for the use of a grist-mill, on the east side of the road at the west end of the saw mill-dam."

The land necessary is the measure of quantity, and this could only be ascertained by proof.

Again, if it was important that the defendant should show title in himself, the deed from Brooks to him was clearly competent for that purpose under the pleadings. It was perhaps sufficient for the defendant to show title out of the plaintiff, but the particular objection taken to its admission was clearly untenable.

The judgment must therefore be reversed, and a new trial granted.

ABSTRACTS OF RECENT ENGLISH DECISIONS.

Arbitration—Joint Execution.—Where an award is to be made by more than one arbitrator, it must be the joint act of all, executed in the presence of each other; therefore an award in such case which purports to be signed and published by the arbitrators at different places is invalid. *Wade* vs. *Dowling*, 18 Jur. 728, Q. B.

Assignment, Voluntary—Incomplete Alienation.—In order to make a voluntary assignment of a reversionary interest, of a chose in action, or the like, effectual against the assignor, he must at the time of the assignment, have done all in his power to make it available. *Beech* vs. *Kemp*, 23 L. J. Ch., 539, Rolls.

But a reversionary interest standing in the name of a trustee may be transferred by voluntary deed with notice to the trustee, if the assignor

has no other means to effectuate his intention. *Voyle* vs. *Hughes*, 23 L. J. Ch. 238, STUART, V. Ch.

Bailment—Liability of Boarding-House Keeper.—Declaration that defendant being a boarding-house keeper, received plaintiff with her baggage for reward, as a guest in defendant's house, on the terms, amongst others, that the defendant should "take due and reasonable care" of plaintiff's baggage while in the house. Breach: that by negligence of defendant and her servants, plaintiff's baggage was lost. Pleas: not guilty, and a traverse of the receipt on those terms. Issues thereon: on the trial, it appeared that plaintiff was received with her baggage as a guest, but nothing was expressed as to the care to be taken of the goods. The goods were stolen from the house whilst plaintiff was a guest, and there was evidence that the theft was facilitated by the defendant's servant having left the front door ajar; and there was also some evidence that defendant was aware of habitual negligence of the servant in this respect. The Judge told the jury that a boarding-house keeper was bound to take due and reasonable care about the safe-keeping of the guest's goods; which he explained to be such care as a prudent house-keeper would take of the house for the purpose of protecting her own goods; that the leaving of a door ajar might be the want of such care, but that the defendant was not answerable for such negligence in the servant, unless she had herself been guilty of some negligence, as of keeping such a servant, with knowledge of his habits. Verdict for defendant on not guilty; for plaintiff on the other plea. On a rule for a new trial: held—by the whole Court, that a boarding-house keeper is not bound to keep a guest's baggage safely to the same extent as an inn-keeper; but that she undertakes, by implication of law, although nothing is expressed, to take due and proper care of a guest's baggage; and that neglecting to take due care of the outer door, might be a breach of such duty, and that so far the direction was right. Erle, J., and Wightman, J., held that unless the defendant herself was guilty of the negligence, the act of the servant in leaving the door ajar, was not one for which defendant was responsible; it not being a neglect of any public duty which was owing to plaintiff, and not being a breach of a contract between plaintiff and defendant, but merely negligence of a servant towards his mistress, and that therefore the direction was right. Coleridge, J., and Lord Campbell, C. J., held that the act of the servant was, under the circumstances, an act of the defendant, and that there was no distinction between the personal negligence of the defendant and that of her

servant in her employment, the defendant being equally answerable for both; and therefore they held that the direction was wrong. The Court being equally divided, no new trial was granted. *Dansey* vs. *Richardson*, 3 E. & B. 144. Q. B.

Banker—Refusal to Pay Checks.—Refusal by banker to pay a trader's checks, when sufficient assets, subtantial damages may be recovered, without proof of actual damage. *Rolin* vs. *Steward*, 23 L. J. C. P. 148.

Bill of Exchange—Alteration in a material part.—The acceptance of bill of exchange was altered, without the consent of acceptor, by making it payable at a particular place. The acceptor held discharged, though the plaintiff was an endorsee for value after the alteration, and without notice. *Burchpell* vs. *Moore*, 18 Jur. 727; 23 L. J., Q. B. 261.

Blank Endorsement.—Bill of exchange endorsed in blank, and transferred by the endorsee by delivery only, holder takes as against acceptor, any title which the intermediate endorsee had. *Fairclaugh* vs. *Paira*, 23 L. J., E & Ch. 215.

Forged Acceptance.—A presentment for payment of a bill in pursuance of the terms of a forged special acceptance, is not a good presentment against the drawer, without additional circumstances to make him liable. No presumption that the forged acceptance was on the bill at the time of his endorsement. *Wetton* vs. *Hodd*, 18 Jur. 630; C. P.

Lost Bill.—The loss of a negotiable bill, though unendorsed, given on account of a debt, is an answer to an action for the debt, as well as on the bill. *Crowe* vs. *Clay*, 18 Jurist, 654; Exch. Ch. (In a subsequent case, JERVIS, C. J., doubted whether this applied to a non-negotiable instrustrument.) *Charnley* vs. *Grundy*, 18 Jur. 653.

Corporation—Quo Warranto—Rights of Crown.—JERVIS, C. J., POLLOCK, C. B., CRESWELL, J., PLATT, B., and MARTIN, B., the crown cannot grant a charter not open to the right of the subject to have it declared forfeited on breach of a condition in which he has an interest, or through misuser or abuse; PARKE, B. doubting, and TALFOURD, WILLIAMS and CRESSWELL expressing no decided opinion, except that such exercise of power was not to be implied. *Eastern Archipelago Co.* vs. *The Queen*, 18 Jur. 481.

Covenant Running with Land—Injunction in aid of Specific Performance.—Whatever be the doctrine at law with regard to covenants running with the land, one purchasing real estate with notice of a covenant

or agreement affecting the same, will be restrained in equity from a violation thereof. *Coles* vs. *Sims*, 18 Jur. 683; before L. J. J. of App., affirming *Tulk* vs. *Moxhay*, 2 Phill. 774.

Deed—Setting aside—Mistake—Family Arrangements.—If a party is misled, and under the idea that he is discharging legal liabilities, enters into a contract, which he would have resisted if correctly informed, they will be set aside. The compromise of a suit, and of collateral claims arising out of demands, having no legal existence, are not such considerations as will support a contract as a family arrangement when made on erroneous information. *Lawton* vs. *Campion*, 23 L. J. Ch. 505, Rolls.

Domicil—Conflict of Laws—Administration.—Judgments in England will give no priority against assets in England belonging to a testator dying domiciled abroad; and effect can only be given to them with reference to the law of the domicil. *Wilson* vs. *Lady Dunsany*, 23 L. J. Ch. 492, Rolls.

Evidence—Commission to Foreign Country.—Though on application for a commission to a foreign country it should appear that the mode of examining witnesses in that country differ from the course in England, it is not to be supposed that the evidence will be therefore contrary to the law of England, and the commission may be issued. But if on the trial it appear on the face of the deposition, or by extrinsic evidence, that the examination has been conducted illegally, the whole, or so much as is illegal, will be rejected. *Lumley* vs. *Gye*, 18 Jur. 466, Q. B.

Per CAMPBELL, C. J. The fact that the examination was conducted by a judge, as in Prussia, would not alone be an objection. *Ibid.*

Evidence—Usage to interpret Written Contract.—Cotton was shipped at New Orleans, on board a Liverpool vessel, assigned to a house in the latter port, the bill of lading making it deliverable on "paying freight for it five-eights of a penny per pound, with five per cent. Primage and Average accustomed." In an action for the freight, *held*, that evidence was admissible, that by the custom of Liverpool the defendant (the assignee) was entitled to a deduction of three months' discount from the freight (not in lieu of credit, which was not allowed), though such custom only applied to certain ports in the United States, viz., New Orleans, Mobile, Charleston, and Savannah. *Brown* vs. *Byrne*, 18 Jur. 700, Q. B.

Sale by Sample.—The meaning of an expression in a contract which

indicates the nature of the article contracted for, cannot be altered by any alleged custom of the trade. *Nichol* vs. *Goltz*, 23 L. J. 162, Exch.

Executor—Right to Pledge.—A mortgage of household estates of the intestate's estate, with a power of sale in default of payment, by an administrator, is good. *Russell* vs. *Place*, 23 L. J. Ch. 441, Rolls.

Feme Coverte—Separate Estate—Power.—Feme with life estate in personalty to separate use, and general power of appointment by will, does not, by exercising the power, make the property liable to such engagements as would be charges on her separate estate. *Vaughan* vs. *Vanderslegen*, 2 Drewry, 165.

Husband and Wife—Articles of Separation.—Chancery will compel specific performance of articles of separation, enjoin the husband from proceeding in the Ecclesiastical Court for restitution of conjugal rights, till the execution of a proper deed, where the articles stipulate that he shall permit his wife to live separate and apart, as if she were unmarried, without any molestation on his part; and afterwards direct the insertion in the deed of a covenant by him not to compel the wife to cohabit or live with him by any ecclesiastical censures or proceedings. *Wilson* vs. *Wilson*, 23 Law Times, 134, House of Lords.

Husband and Wife—Liability of Husband for Fraudulent Representation of Wife.—No action lies against husband and wife for a false and fraudulent representation that she was unmarried, whereby the plaintiff was induced to take her promissory note as security for a loan to a third person. Though wife liable in general for fraud, yet not where it is directly connected with a contract by her, and forms part of it. *Fairhurst* va. *Liverpool Loan Ass.* 4 Exch. 422.

Infants, Jurisdiction over, when resident abroad.—The Court of Chancery has jurisdiction over infants who are natural-born English subjects, though born and resident abroad; but, *quære*, whether, except under very special circumstances, it will make an order with reference to the custody of the infant, in a case where the Court sees no means of enforcing compliance with its order. *Hope* vs. *Hope*, 23 L. T. 182, M. R.

Quære, whether the French Court would act as ancillary to the Court of Chancery in England in enforcing obedience to an order made by this Court for the delivery up of an infant, a natural-born English subject resident in France, to the custody of its parent here. *Ibid.*

International Law—Rights of Neutrals.—Residence in enemy's country for purposes of trade, though at the same time consul of a neutral power, disqualifies from claiming as a neutral. A neutral cannot claim as mortgagee of an enemy's vessel. *The Aina*, 18 Jur. 681, Adm. Prize Ct.

Insolvency—What vests in Assignees.—Action for non-delivery of a machine, whereby the plaintiff was deprived of gains and profits, and his whole business and trade ruined, and himself forced into insolvency, cannot be maintained after vesting order in insolvency, because the right of action passes to the assignee. *Stanton* vs. *Collier*, 18 Jur. 650, Q. B.

Insurance—Total Loss—Abandonment.—Where there has been once a total loss by capture, it is a permanent total loss, unless either the ship be actually restored to the possession of the owner, or they have the power of immediately taking possession, before the abandonment. This principle applied where ship captured by pirates, but recaptured and kept as prize by a Government vessel, after which owners abandoned; and then the ship, while being brought home for adjudication, meeting with bad weather, had to be sold at an intermediate port by the prize-master. *Dean* vs. *Hornby*, 18 Jur. 623, Q. B.

Judgment recovered in trover.—A plea of judgment, recovered in trover, against one person for the conversion of goods, is a bar to an action of assumpsit for the proceeds of the sale of the goods by another, whether he be a party to the conversion or a stranger. *Buckland* vs. *Johnson*, 23 L. T. 190 C. B.

Mortgage—Lunatic.—In an ordinary foreclosure suit the Court will not inquire into the validity of the mortgage on the ground of the lunacy of the mortgagor, but will direct the defendants to try its validity by an ejectment, or by an issue as to the question of sanity. *Jacobs* vs. *Richards*, 23 L. J. Ch. 557, L. J. J. app.

Patent—Prior public use.—Patent for improvement in the manufacture of cast steel, by the use of carbonate of manganese. In an action for infringement, evidence that for eight or ten years before the grant of the patent, five firms had manufactured steel in the manner described in the patent, and had used and sold the steel so manufactured in the way of their trade, three of the firms without concealment, held sufficient to establish such a prior public use as to invalidate the patent; and *quære* per ERLE, J., whether it would have made any difference, that the process of the prior

manufacture had been kept secret, if perfected and sold. *Heath* vs. *Unwin*, 18 Jur. 601, Q. B.

Shipping—Charter Party—Usage of port—Reasonable time.—By a charter-party the master of a vessel, engaged to proceed with his vessel to a particular colliery, and there take on board for the freighters a cargo of coal. Before the charter-party was signed, both parties knew that the colliery was not at work, an accident having happened to the steam engine, and both were told that it would be repaired in a short time, and that the vessel would be loaded in her turn in a few days after the colliery got to work again, according to the practice of the port, which was, that ships were loaded in their regular turns, as they were entered on the colliery books. The freighter had no control over the colliery. The ship was loaded in her turn, but not until several days later than the colliery agent had led the parties to expect. *Held*, that if the steam engine was repaired, and the colliery got to work in a reasonable time after the execution of the charter-party, and if the vessel was loaded within a reasonable time after the colliery got to work, the freighters were not liable to compensate the master of the vessel for the delay in the loading. *Harris* vs. *Dreesman*, 23 L. J. 210, Exch.

Shipping—Demurrage—Freighter—Endorsee of bill of lading.—The freighter of goods, who has entered into a contract with the ship-owner to pay demurrage, the goods being deliverable by the bill of lading to him or his assignees on paying freight, is not relieved from his liability to pay demurrage, although the bill of lading has been assigned before the arrival of the ship, and the goods are parted with by the ship-owner to the assignee without satisfaction of the ship-owner's lien. *Harrison* vs. *Spaeth*, 23 L. J. 155, Q. B.

Shipping—Liverpool pilot—Necessity of hiring licensed pilots—Responsibility of owner.—The Liverpool pilot act enacts that, in case an outward-bound vessel shall proceed to sea without a licensed pilot, the master shall be bound to pay to the first pilot who offers his services the full amount of pilotage. The defendant's vessel took a pilot on board before she left the docks, and was in the river Mersey, with the riggers on board, on the 3d of June, completing the arrangements for her sailing on the following day, when she ran foul of and sank the plaintiff's anchor boat. *Held*, that the vessel was not proceeding to sea within the act, and that, therefore, as it was not compulsory to have a pilot on board, the owners were liable. (*Bennet* vs. *Moita*, 7 Taunt. 258, has been overruled by *Hammond* vs.

Rogers, 7 Moore's Rep. P. C. 160). *Rodrigues* vs. *Melhuish*, 23 L. T. 177, (Exch.)

Solicitor and client—Bill of costs.—A solicitor having lien on certain papers of his client for certain costs, refused to deliver them up, until the client executed an agreement to pay a fixed sum of money in settlement of his bill in the event of the client's succeeding in a suit then pending. No bill of costs was asked or given. The agreement was executed with full knowledge and without pressure. The agreement held binding. *Steelman* vs. *Collet*, 18 Jur. 457, Rolls.

Solicitor and client—Solicitor taking benefit under his client's will.—Where a testator makes a disposition by his will in favor of the solicitor employed by him to make the will, in such language and under such circumstances as that upon the trial at law of an issue *devisavit vel non*, brought by the heir-at-law of the testator, or upon the hearing of the Ecclesiastical Court of a suit touching the validity of the will, the disposition in question would be upheld; this Court will not, on the mere ground that the relation of solicitor and client existed between the solicitor and the testator, interfere, at the instance of the heir-at-law or next of kin, to fix a trust for the benefit of either of them upon the property devised or bequeathed to the solicitor. *Hindson* vs. *Wetherill*, 18 Jur. 499, 23 L. T. 149. (L. C. and Lords JJ.)

Statute of limitations—Fraud.—No answer to plea of the statute, that in consequence of the fraud of the defendant, the plaintiff was prevented from discovering his cause of action before, and that he had commenced his action within six years after discovery. *Imp. Gas Light Co.* vs. *Lond. Gas Light Co.* 18 Jur. 497.

Vendor and Vendee—Custody of title deeds.—Conditions of sale of several lots stipulated that "the purchaser of the largest lot" should have the title deeds; "largest lot" means most extensive, not the most valuable. *Griffiths* vs. *Kutchards*, 18 Jur. 649, V. C. Wood, (doubted by correspondent, 18 Jur. part ii, 262).

Warranty—Representative when not.—A, whose horse is to be sold at auction the next day, sees B, a friend, examining the horse, and says: "You have nothing to look for, I assure you; he is sound in every respect;" to which B replies: "If you say so, I am satisfied." The horse is then sold at auction, without warranty, to B. The previous representation held not to amount to a warranty. *Hopkins* vs. *Tanqueray*, 18 Jur. 608, C. P.